IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.49 of 2005.

Judgment Reserved on: 12.06.2007

Date of decision:18.06.2007

State Bank of India, Bilaspur **….Petitioner**

Versus

Indira Binding Works & Others **….Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.K.D. Sood, Advocate.**

For Respondents 1&3: **Mr.T.S. Chauhan, Advocate.**

Dev Darshan Sud,J.

This revision has been filed by the Decree Holder-Bank against the order of the learned Executing Court accepting the Objection Petition filed under Section 47 of the Code of Civil Procedure by the Judgment Debtors objecting to the amount claimed in execution by the Decree Holder.

A suit for recovery of Rs.76,654.50 paise was filed by the Petitioner-Decree Holder against the Respondents-Judgment Debtors. The suit was compromised and a decree passed on 10.11.1994 for the recovery of the amount as aforesaid. Interest @ 15% per annum

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

with half yearly rests w.e.f.12.8.1993 till final payment was passed in favour of the Decree Holder.

The Judgment Debtors have filed an Objection Petition under Section 47 of the Code of Civil Procedure on the ground that a sum of Rs.1,11,083/- has been deposited by the Judgment Debtors and that now, only a sum of Rs.10,898/- is due as outstanding. The learned Executing Court, after considering the reply filed by the Decree Holder and without recording any evidence, without coming independently to any conclusion determining the amount payable, accepted the Objection Petition and allowed execution of the decree for a sum of Rs.10,989/- as admitted by the Judgment Debtors. The Decree Holder aggrieved by this order has preferred this Revision Petition.

I have heard learned counsel for the parties and have gone through the record of the case.

Surely, a duty was cast upon the Executing Court to have ascertained the amount due and payable under the decree by reference to the material on the record which would include evidence oral and documentary led by the parties. Merely stating that the Decree Holder has not been able to establish his case, without giving an opportunity of leading evidence, is against law. The question regarding the executability of the decree has to be determined as a fact after parties have been given an opportunity to establish their respective contentions. This cannot

be done by merely asking them to state in writing their objections to the Execution Petition and the reply thereto. Meaningful determination would require that the parties are allowed to lead evidence and to place such material on the record in order to establish their respective claims. The learned Court below has failed to exercise jurisdiction vested in it and has acted illegally in the exercise of its jurisdiction. There was no justification to have decided the case simply on the basis of the petition and the reply filed thereto.

In these circumstances, this Revision Petition is accepted. The judgment of the Executing Court is quashed and set aside. The matter is sent to the Executing Court with a direction that the matter shall be decided afresh in accordance with law after giving an opportunity to both the parties to lead their evidence and to place on record such material to establish their respective claims. A further direction is issued to the learned Court below to dispose of the matter expeditiously and in any event not later that six months from today since the decree had been passed in the year 1994. Parties to appear before the Executing Court on ***30th June, 2007***. There shall no order as to costs. Records of the Court be sent back immediately.

June 18, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**